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STATE OF WISCONSIN
Division of Hearings and Appeals

In the Matter of

████████████████████
c/o ██████████████████
██████████████████
██████████████████

DECISION

MPA/167897

PRELIMINARY RECITALS

Pursuant to a petition filed August 10, 2015, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Office of the Inspector General (OIG) in regard to Medical Assistance, a telephonic hearing was held on September 03, 2015, at Milwaukee, Wisconsin.

The petitioner is a 71 year old woman who was represented by her daughter, ██████████ during the hearing. During that hearing, petitioner's representative requested that the record be held open for documents to be submitted to the Division of Hearings and Appeals, and then for those documents to be sent to the Office of the Inspector General (OIG) for a reconsideration decision with an opportunity for a reply by Ms. ██████████.

This Administrative Law Judge (ALJ) sent an October 22, 2015 cover letter to Ms. ██████████ at the Office of the Inspector General (OIG) with a copy of the following documents: a) an October 14, 2015 cover letter by ██████████; b) an August 28, 2015 letter by Dr. ██████████; c) an October 8, 2015 ██████████ physician order for personal care services; d) a September 3, 2015 letter by petitioner's board-certified endocrinologist and internist, Dr. ██████████; e) ██████████ medical information about petitioner; f) Medicare Wellness Visit Plan for Preventive Care; and g) ██████████ at Home agreement; and h) X rays of the petitioner.

In that same letter, this ALJ requested that Ms. ██████████ review the enclosed documents, and submit a reconsideration summary to me at the Division of Hearings and Appeals by November 3, 2015 with a copy of that reconsideration summary letter to be sent to the petitioner's representative, Ms. ██████████. The petitioner's representative requested and was granted until November 13, 2015 to submit to DHA a written response to Ms. ██████████'s reconsideration summary.

OIG representative Ms. ██████████ timely submitted an October 30, 2015 Reconsideration to DHA and to petitioner's representative, ██████████. After reviewing petitioner's new evidence, Ms. ██████████ in her Reconsideration approved an increase in petitioner's PCW hours from **25.7 to 34 hours per week**. See October 30, 2015 Reconsideration. Ms. ██████████ failed to submit to DHA any response to the Reconsideration by November 13, 2015 or even by the date of this decision.

The issue for determination is whether the Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 57.5 to 34 hours per week, and then approved the 34 hours per week.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:

████████████████████
 c/o ████████████████████
 ████████████████████
 ████████████████████

Respondent:

Department of Health Services
 1 West Wilson Street, Room 651
 Madison, Wisconsin 53703

By: ██████████ ██████████, RN nurse consultant
 Office of the Inspector General (OIG)
 1 West Wilson Street, Room 272
 P.O. Box 309
 Madison, WI 53707-0309

ADMINISTRATIVE LAW JUDGE:

Gary M. Wolkstein
 Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a 71 year old resident of Milwaukee County who resides with her daughter and personal care worker (PCW), ██████████. ██████████ also resides in the same residence with her boyfriend, ██████████, and also provide PCW services for Mr. ██████████.
2. The petitioner is diagnosed with Alzheimer's disease and dementia without any documented behavioral disturbance listed on her PA. Her functional limitations are bowel/bladder incontinence, endurance, and ambulation. She requires the use of diabetic shoes.
3. On or about June 1, 2015, the petitioner's provider, ██████████, Inc., requested prior authorization (PA) for MA coverage of personal care worker (PCW) of 57.5 hours per week for 53 weeks at a requested cost of \$49,003.80. See Exhibit 2.
4. The petitioner's Personal Care Screening Tool (PCST) was completed on April 11, 2015 by ██████████ at petitioner's home. See Exhibit 1. In that PCST, the screener generally evaluated the petitioner's need for physical assistance with bathing, dressing her upper and lower body with constant supervision twice daily. ██████████ needs full assistance with grooming. She needs assistance to eat meals three times daily. She is able to partially feed herself, but requires assistance to finish meals and ensure adequate intake. She requires physical assistance to ambulate and transfer daily. She is able to move about on her own, but requires supervision in case of wandering. She needs assistance with toileting and incontinence care about six times daily. She also needs assistance taking her medications. The petitioner was not documented as having behaviors or medical conditions (other than wandering due to dementia) which interfere with the PCW's assistance with cares or present unique challenges which results in extra PCW time to perform cares.

5. Based upon her Personal Care Activity Time Allocation Table and her PCST, the petitioner was approved for the following reduced amount of 25.7 hours of PCW services per week: a) Bathing – 210 minutes per week; b) Dressing of upper and lower body – 140 minutes per week; c) Grooming – 210 minutes per week; d) Eating Assistance – 0 minutes per week; f) Mobility – 140 minutes per week because petitioner wanders and needs constant supervision due to her dementia; g) Incontinence – 630 minutes per week for incontinence care six times daily; h) Medication Assistance – 0 because the submitted POC does not include any physician orders for the PCW to administer medications; i) Transfers – 210 minutes per week – petitioner needs assistance with completing transfers; and j) Services Incidental to Tasks – 0 minutes per week for ADLs and Medically Oriented Services (MOT) because [REDACTED] lives with her boyfriend ([REDACTED]), and also provide about 28 hours per week of PCW services for him. Thus, Ms. [REDACTED] is not permitted to have “duplicate” Services Incidental to Tasks for two patients. The petitioner’s total ADL and MOT were 25.7 hours per week.
6. On review of the PA Request, the Office of the Inspector General (OIG) modified the prior authorization request from the requested 57.5 to 25.7 PCW hours per week based upon the Personal Cares Screening Tool (PCST) assessing the petitioner’s PCW needs.
7. OIG issued a July 22, 2015 letter Notice to the petitioner’s representative informing her that petitioner’s PA requested personal care worker services had been reduced from 57.5 to 25.7 hours per week, and then approved as modified.
8. While the record was held open, petitioner submitted to DHA and OIG additional clinical information and letters (cover letter by Ms. [REDACTED], two physician letters, a physician order from [REDACTED], a Medicare Wellness visit, an [REDACTED] at Home service Agreement, and x rays of the petitioner) in support of petitioner’s additional PCW services. See above Preliminary Recitals.
9. In her well-organized, detailed October 30, 2015 reconsideration to DHA, OIG’s nurse consultant, [REDACTED], stipulated to the increase in petitioner’s PCW services **from 25.7 to 34 hours per week** based upon the new clinical evidence, as itemized on page 2 of that reconsideration (additional PCW time for eating three times daily, and extra assistance with laundry and meals). See Exhibit 4.
10. The petitioner did not submit to DHA any written response to OIG’s October 30, 2015 reconsideration by November 13, 2015 or even by the date of this decision. See above Preliminary Recitals.

DISCUSSION

The Office of the Inspector General (OIG) may only reimburse providers for medically necessary and appropriate health care services and equipment listed in Wis. Stat. §§ 49.46(2) and 49.47(6)(a), as implemented by Wis. Admin. Code Ch. DHS 107. Some services and equipment are covered if a prior authorization request is submitted and approved by the Division in advance of receiving the service. Finally, some services and equipment are never covered by the MA program.

In the case of PCW services, MA pays only for medically-oriented activities related to assisting a recipient with activities of daily living necessary to maintain the recipient in his place of residence in the community. Wis. Admin. Code § DHS 107.112(1)(a). **Covered PCW services include only the following:**

1. Assistance with bathing;
2. Assistance with getting in and out of bed;
3. Teeth, mouth, denture and hair care;
4. Assistance with mobility and ambulation including use of walker, cane or crutches;

5. Changing the recipient's bed and laundering the bed linens and the recipient's personal clothing;
6. Skin care excluding wound care;
7. Care of eyeglasses and hearing aids;
8. Assistance with dressing and undressing;
9. Toileting, including use and care of bedpan, urinal, commode or toilet;
10. Light cleaning in essential areas of the home used during personal care service activities;
11. Meal preparation, food purchasing and meal serving;
12. Simple transfers including bed to chair or wheelchair and reverse; and
13. Accompanying the recipient to obtain medical diagnosis and treatment.

Wis. Admin. Code § DHS 107.112(1)(b).

Further, PCW services must be provided according to a written plan of care that is based on an evaluation made by an RN who has visited the recipient's home. Wis. Admin. Code §§ DHS 107.112(1)(a) & (3)(b).

During the September 3, 2015 hearing, the petitioner's representative and PCW, her daughter, [REDACTED], asserted petitioner needed more than the reduced amount of 25.7 hours per week of PCW hours approved by OIG. Petitioner was able to specifically indicate some areas where the approved 25.7 hours of PCW hours was insufficient to meet the petitioner's PCW needs in some of the above 13 covered PCW services.

While the record was held open, petitioner submitted documentation which did support certain specific needs for the petitioner's PCW hours to be increased above 25.7 hours per week. In OIG's October 30, 2015 Reconsideration, OIG's nurse consultant [REDACTED] stipulated to the increase in petitioner's PCW services **from 25.7 to 34 hours per week** based upon the new clinical evidence, as itemized on page 2 of that reconsideration. See Exhibit 4. The petitioner's representative did not submit any response to support that petitioner needed further increase for valid PCW tasks from 34 to 57.5 hours per week (no physician order for PCW to assist petitioner in taking her medications or checking her blood sugars daily, and not PCW coverage to administer insulin daily per DHS 107.112(4)(g)(2), Wis. Admin. Code. See above Preliminary Recitals. In addition, petitioner did not submit any reliable evidence to establish Ms. [REDACTED]'s allegation that the petitioner was thrashing or hitting her making her PCW services more time consuming to conduct.

The petitioner was unable to establish that she has any covered PCW needs that are not being met by the increased amount of 34 PCW hours approved by the Department for which there are also valid and timely physician orders or not a covered service (the administration of insulin to her mother not a covered PCW service per DHS 107.112(4)(g)(2), Wis. Admin. Code). Accordingly, based upon review of the entire hearing record, I conclude that the Department correctly modified (reduced) the petitioner's prior authorization (PA) for personal care worker (PCW) services from 57.5 hours per week, and then approved the increased amount of 34 hours per week.

CONCLUSIONS OF LAW

The Department correctly modified (reduced) the petitioner's prior authorization (PA) request for personal care worker (PCW) hours from 57.5 to 34 hours per week, and then approved the 34 hours per week.

THEREFORE, it is

ORDERED

The petition for review herein be and the same is hereby Dismissed.

REQUEST FOR A REHEARING

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

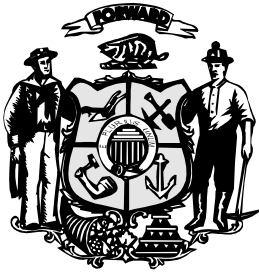
APPEAL TO COURT

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Madison,
Wisconsin, this 30th day of November, 2015

\sGary M. Wolkstein
Administrative Law Judge
Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

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The preceding decision was sent to the following parties on November 30, 2015.

Division of Health Care Access and Accountability